

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

BOBBY MORRIS, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

OHMIUX LLC D/B/A CARBINOX,

Defendant.

Case No. 4:25-cv-00663-MTS

DEFENDANT OHMIUX LLC D/B/A

CARBINOX’S ANSWER TO PLAINTIFF’S COMPLAINT

Defendant Ohmiux LLC d/b/a Carbinox (“Carbinox”) hereby answers the complaint of Plaintiff Bobby Morris (“Plaintiff”), as follows:

I. INTRODUCTION

1. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

2. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

3. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

4. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

II. PARTIES

5. Answering Paragraph 5 of the Complaint, Carbinox is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

6. Carbinox admits the allegations of Paragraph 6 of the Complaint

III. JURISDICTION AND VENUE

7. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

8. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

9. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

IV. FACTS

10. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

11. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

12. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

13. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

14. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

B. The TCPA Requires Entities To Have Sufficient Policies in Place to Prevent Unwanted Calls Before Making Telemarketing Calls

15. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

16. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

17. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

18. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

19. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

20. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

C. Unsolicited Telemarketing to Plaintiff

21. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

22. Answering Paragraph 22 of the Complaint, Carbinox is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

23. Answering Paragraph 23 of the Complaint, Carbinox is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

24. Answering Paragraph 24 of the Complaint, Carbinox is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

25. Answering Paragraph 25 of the Complaint, Carbinox is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

26. Answering Paragraph 26 of the Complaint, Carbinox is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

27. Answering Paragraph 27 of the Complaint, Carbinox is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

28. Answering Paragraph 28 of the Complaint, Carbinox is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

29. Answering Paragraph 29 of the Complaint, Carbinox admits it sent certain text messages to a telephone number ending in -0403 after receiving consent from Plaintiff to send text messages to that number. Carbinox denies the remaining allegations of this paragraph.

30. Answering Paragraph 30 of the Complaint, Carbinox admits it sent certain text messages to a telephone number ending in -0403 after receiving consent from Plaintiff to send text messages to that number. Carbinox denies the remaining allegations of this paragraph.

31. Carbinox denies the allegations of Paragraph 31 of the Complaint.

32. Carbinox denies the allegations of Paragraph 32 of the Complaint.

33. Answering Paragraph 29 of the Complaint, Carbinox admits it sent certain text messages to a telephone number ending in -0403 after receiving consent from Plaintiff to send text messages to that number. Carbinox denies the remaining allegations of this paragraph.

34. Answering Paragraph 34 of the Complaint, Carbinox is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

35. Answering Paragraph 35 of the Complaint, Carbinox is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

36. Answering Paragraph 30 of the Complaint, Carbinox admits it sent certain text messages to a telephone number ending in -0403 after receiving consent from Plaintiff to send text messages to that number. Carbinox denies the remaining allegations of this paragraph.

37. Answering Paragraph 37 of the Complaint, Carbinox is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

38. Answering Paragraph 38 of the Complaint, Carbinox is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

39. Answering Paragraph 29 of the Complaint, Carbinox admits it sent certain text messages to a telephone number ending in -0403 after receiving consent from Plaintiff to send text messages to that number. Carbinox denies the remaining allegations of this paragraph.

40. Carbinox denies the allegations of Paragraph 40 of the Complaint.

41. Carbinox denies the allegations of Paragraph 41 of the Complaint.

42. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

43. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied, including any allegation that Carbincox received a “stop” message from Plaintiff’s cellular telephone number, or failed to honor a “stop” message received from Plaintiff’s cellular telephone number.

44. Carbincox denies the allegations of Paragraph 44 of the Complaint.

45. Carbincox denies the allegations of Paragraph 45 of the Complaint.

46. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

47. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

48. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

49. Carbincox denies the allegations of Paragraph 49 of the Complaint.

50. Carbincox denies the allegations of Paragraph 50 of the Complaint.

51. Carbincox denies the allegations of Paragraph 51 of the Complaint.

52. Carbincox denies the allegations of Paragraph 52 of the Complaint.

53. Carbincox denies the allegations of Paragraph 53 of the Complaint.

54. Carbincox denies the allegations of Paragraph 54 of the Complaint.

55. Carbincox denies the allegations of Paragraph 55 of the Complaint.

V. CLASS ACTION ALLEGATIONS

56. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

57. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

58. Carbincox denies the allegations of Paragraph 58 of the Complaint.

59. Carbincox denies the allegations of Paragraph 59 of the Complaint.

60. Carbincox denies the allegations of Paragraph 60 of the Complaint.

61. Carbincox denies the allegations of Paragraph 61 of the Complaint.

62. Carbincox denies the allegations of Paragraph 62 of the Complaint.

63. Carbincox denies the allegations of Paragraph 63 of the Complaint.

64. This paragraph does not contain any factual allegations to which a response is required. To the extent this paragraph contains any factual allegations, those allegations are denied.

65. Carbincox denies the allegations of Paragraph 65 of the Complaint.

66. Carbincox denies the allegations of Paragraph 66 of the Complaint.

67. Carbincox denies the allegations of Paragraph 67 of the Complaint.

68. Carbincox denies the allegations of Paragraph 68 of the Complaint.

69. Carbincox denies the allegations of Paragraph 69 of the Complaint.

70. Carbincox denies the allegations of Paragraph 70 of the Complaint.

FIRST CAUSE OF ACTION

Telephone Consumer Protection Act

Violations of 47 U.S.C. § 227(c)(5) & 47 C.F.R. § 64.1200(c)

(On Behalf of Plaintiff and the National Do Not Call Registry Class)

71. Carbinox incorporates its responses to the preceding allegations of the Complaint as though fully set forth herein.

72. Carbinox denies the allegations of Paragraph 72 of the Complaint.

73. Carbinox denies the allegations of Paragraph 73 of the Complaint.

74. Carbinox denies the allegations of Paragraph 74 of the Complaint.

75. Carbinox denies the allegations of Paragraph 75 of the Complaint.

SECOND CAUSE OF ACTION

Telephone Consumer Protection Act

(47 U.S.C. § 227(c)(5) & 47 C.F.R. § 64.1200(d))

(On Behalf of Plaintiff and the Internal Do Not Call Registry Class)

76. Carbinox incorporates its responses to the preceding allegations of the Complaint as though fully set forth herein.

77. Carbinox denies the allegations of Paragraph 77 of the Complaint.

78. Carbinox denies the allegations of Paragraph 78 of the Complaint.

79. Carbinox denies the allegations of Paragraph 79 of the Complaint.

PRAYER FOR RELIEF

In response to Plaintiff's Prayer for Relief, Carbinox denies that Plaintiff is entitled to any relief in this action.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Prior Invitation or Permission

Carbinox is informed and believes, and on that basis alleges that to the extent Carbinox sent any text messages to Plaintiff or any individual who meets Plaintiff's putative class definition, it did so with the prior express invitation or permission of the person who was texted.

Second Affirmative Defense

Established Business Relationship

Carbinox is informed and believes, and on that basis alleges that to the extent Carbinox sent any text messages to Plaintiff or any individual who meets Plaintiff's putative class definition, it did so pursuant to an established business relationship with the person who was texted.

Third Affirmative Defense

Bona Fide Error

Even assuming Carbinox committed any violation of the TCPA, which Carbinox expressly denies, it bears no liability for such a violation because the violation was the result of a bona fide error. 47 C.F.R. § 64.1200(c)(i).

Fourth Affirmative Defense

Lack of Subject Matter Jurisdiction

Plaintiff lacks Article III standing to assert the claims she has alleged against Carbinox. Among other things, Plaintiff cannot allege she has suffered an injury in fact that is: (1) fairly traceable to Carbinox; or (2) capable of redress against Carbinox.

Fifth Affirmative Defense

Due Process – Eighth Amendment

The Complaint, in asserting claims under the Telephone Consumer Protection Act ("TCPA"), violates the rights of Carbinox to protection from "excessive fines" as provided

in the Eighth Amendment to the United States Constitution. Statutory penalties violate due process rights “where the penalty prescribed is so severe and oppressive as to be wholly disproportioned to the offence and obviously unreasonable.” *United States v. Citrin*, 972 F.2d 1044, 1051 (9th Cir. 1992) (quoting *St Louis, I.M. & S. Ry. Co. v. Williams*, 251 U.S. 63, 66-67 (1919)). The alleged violation at issue – “making” a call to a cell phone that may or may not have been connected, received, or answered – causes *de minimis* or no actual harm. Imposition of a \$500.00 per call penalty is plainly excessive in this context and, taken in the aggregate, may result in potential damages that are not proportional to the conduct alleged.

Sixth Affirmative Defense

Due Process – Fifth Amendment

The penalties sought by Plaintiff under the TCPA, particularly on a class-wide basis, exceed the constitutional limits of the Due Process Clause of the Fifth Amendment to the United States Constitution. As aggregated on a class-wide basis, the statutory penalties sought by Plaintiff are wholly disproportioned and obviously unreasonable in relation to the goals of the TCPA and the conduct the statute prohibits.

Seventh Affirmative Defense

Due Process – Punitive or Exemplary Damages

The Complaint, to the extent that it seeks punitive or exemplary damages under the TCPA (including for alleged willful violations), violates the rights of Carbinox under the Due Process provisions of the United States Constitution. Specifically, grossly excessive penalties entered on a discretionary basis may amount to an “arbitrary deprivation of property without due process of law.” E.g., *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 453, 454 (1993); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 562 (1996). The TCPA affords discretion to award up to \$1,500.00 “per violation.” Yet, the alleged violation at issue causes *de minimis* or no actual harm. Hence, imposition of the

discretionary punitive damage element built into the TCPA would violate the BMW proportionality test.

Eighth Affirmative Defense

First Amendment

The TCPA and the regulations and rules promulgated thereunder violate the First Amendment of the United States Constitution, including by imposing content-based restrictions on speech that fail to withstand strict scrutiny.

Ninth Affirmative Defense

Federal Communications Commission Exceeded Delegated Authority

Plaintiff's TCPA claims are barred because they are based upon regulations or rulings that exceeded the delegated authority of the Federal Communications Commission.

Tenth Affirmative Defense

Arbitration and Class Waiver

Plaintiff and the putative class members are barred from asserting claims in this forum to the extent their claims are subject to a binding arbitration agreement and an agreement to arbitrate their disputes on an individual (non-class) basis, depriving this Court of jurisdiction over such claims, and rendering venue in this Court improper.

Eleventh Affirmative Defense

Acquiescence, Estoppel, and Waiver

Plaintiff and the putative class members are barred from asserting their claims, in whole or in part, by the doctrines of acquiescence, estoppel, and/or waiver. For example, Plaintiff cannot assert claims under the TCPA against Carbinox to the extent they or others voluntarily provided telephone numbers for the purpose of receiving calls like the ones referenced in the Complaint.

DATED: July 2, 2025

BUCHALTER
A Professional Corporation

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